IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 60 of 1987

WITH

WEALTH TAX REFERENCE No.63 of 87

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

HAZARAT PIR SHAH-E-ALAM

Appearance:

1. WEALTH TAX REFERENCE No. 60 of 1987

MR BB NAIK, Advocate for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 12/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

1. In the Wealth Tax Reference no.60/87,the Income-Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following question for the opinion of this court in respect of the Assessment Years 1972-73 to 1980-81:

> "Whether the assessee is a Public Charitable Trust entitled for exemption under Sec.5(1)(i) of the Wealth-Tax Act?"

The assessee- Hazarat Pir Shah-E-Alam Roza Estate Trust (for short " Roza Estate Trust") was found in the survey operation undertaken by the department not to have filed any Wealth-Tax Returns for the various years under consideration. The Wealth-Tax Officer was of the view that the assessee-Roza Estate Trust had a substantial taxable wealth, and therefore, it issued notice under Section 17(1)(a) of the Wealth-Tax Act. Since there was no response to the notice, the Wealth-Tax Officer proceeded to frame the assessment under Section 16(5) of the Act.

2. In the Wealth-Tax Reference no.63/1987, the Tribunal has referred the following question for the Assessment Years 1972-73 to 1980-81 in the proceedings arising out of the assessment made in the name of the assessee-Saiyed Musamiya Imam Haider:

> "Whether, on the facts and circumstances of the case, the immovable properties in question belonged to the Trust and not the assessee?"

The assessee-Saiyed Musamiya Imam Haider had not submitted any Return of wealth for the years under consideration and the Wealth-Tax Officer was of the view that he derived substantial income from the properties and had a taxable wealth. Notices were issued under Section 17 of the said Act on him. However, there was no response and ultimately, the Wealth Tax Officer proceeded to frame the assessment under Section 16(5) of the Wealth Tax Act. The Wealth-Tax Officer was of the view that the properties located at Vasana, Isanpur, Sarsa and Rasulabad belonged to the Assessee-Saiyed Musamiya and not to the aforesaid Trust. He, therefore, proceeded to estimate the value of the properties and subjected the same to Wealth-Tax for all the years under consideration as the personal properties of Saiyed Musamiya. He

however, also assessed the said wealth in the hands of the Roza Estate Trust as a protective measure but did not allow any exemption under Section 5(1)(i) of the said Act holding that the said Roza was not a charitable one.

3. In the appeals before the CWT (Appeals), the Commissioner of Wealth, relying upon the decision of the Tribunal in Income Tax Appeals nos.2196 to 2199/Ahd/76-77 and 2200 to 2203/Ahd/76-77 in which the Tribunal had held that Hazarat Fir Shah-E-Alam Roza Estate Trust was a Public Charitable Trust and its income was exempt under Section 11 provided that the conditions mentioned therein were fulfilled by the Trust, set aside the assessment with a direction to the Wealth-Tax Officer to consider the matter afresh on the question whether assessee-Trust was entitled to exemption under Section 5(1)(i) of the said Act?. The Tribunal confirmed the said order of the Commissioner of Wealth-Tax (Appeals) for all the years under appeal by its order dated 3rd June, 1987 in Wealth Tax Appeals nos.556 to 564/AHD/1985 from which the Wealth Tax Reference no.60/87 has arisen.

4. So far as the assessee Saiyed Musamiya Immam Haider is concerned, in the Appeals filed by the Wealth Tax Officer (Wealth Tax Appeals nos.706 to 714/AHD/85) the Tribunal concurred with the Commissioner of Wealth Tax (Appeals) whereby he directed the W.T.O to recompute the total wealth of the assessee Musa Miya after excluding the various items of properties which were held to be belonging to the Roza Trust and not his individual properties, directed the W.T.O. to work out the total wealth of the assessee-Musa Miya on the basis of the order of the Tribunal pertaining to the Income-Tax Assessment of the Trust as well as the individual assessment, and confirmed the order of the C.W.T.(Appeals).

5. In the Income-Tax Reference no.135/1988 which had arisen from the orders of the Tribunal made in the appeals, these very questions as to whether Roza Trust was a Public Trust and whether the properties of the four villages were the properties of the Trust was in issue. By our judgment in ITR no.135/1988 delivered on 11-4-2002 (copy annexed) we have answered the Reference by accepting the finding of the Income-Tax Tribunal that the Roza Trust was a Public Trust and the properties which are in dispute were the properties of the Roza Trust. For the reasons given by us in that judgment which have a bearing on the aforesaid two questions referred to us in these two References, we hold that the Tribunal was right in holding that the assessee-Roza Trust was a charitable

trust entitled for the exemption under Section 5(1)(i) of the Wealth Tax and that the immovable properties in question belong to the Roza Trust and not to the assessee-Saiyed Musa. Both the above questions , are therefore, answered in the affirmative in favour of the assessee and against the revenue. Both the References stand disposed of accordingly with no order as to costs.

(R.K.Abichandani,J.)

(Kundan Singh,J.)

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